SUPREME COURT U. S.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No. 1373

NATHAN WECHSLER,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

PETITIONER'S REPLY

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The Memorandum of the United States in Opposition to the Petition points up (1) the error of the court below and (2) the importance of the issue presented.

1. Petitioner does not contend that only the *minimum* elements necessary to a bribery prosecution in Virginia occurred before the Travel Act (18 U.S.C. 1952) was passed on September 13, 1961. Rather, petitioner contends that *all* the elements necessary to a bribery prosecution in Virginia occurred before passage of the Travel Act.

Neither does petitioner contend that the inconsistency between *Nardello*[1] and the decision below is based on *Nardello's* recognition that the principal purpose of the Travel Act is assisting states in enforcing their laws against bribery. Rather, he contends that the inconsistency between *Nardello* and the decision below is that *Nardello* requires that the prosecution must be tied to an activity specifically prohibited by state law. Obviously that activity must not precede the enactment of the Travel Act.

The real difference between petitioner and the United States is the scope of the words "promote, manage, establish, carry on, or facilitate the promotion, management, establishment or carrying on" of bribery under Virginia law, as these words are used in 18 U.S.C. 1952(a)(3). The United States says that these words cover the "entire enterprise," and that anything done "during the period of the bribery scheme" falls within those words, ci ing *United States v. Kubacki*, 237 F. Supp. 638, 642-643 (E.D. Pa.). But *Kubacki* was brought under 18 U.S.C. 1952(a)(1), which proscribes the use of interstate facilities with intent to distribute the proceeds of a bribery. The Government is trying to expand the application of the statute by using new words, contrary to the intent of Congress. If the "entire enterprise" or the whole "period of the bribery scheme" were covered by the "promote, manage," language of § 1952 (a)(3), there would be no need for § 1952(a)(1). The very presence of 1952(a)(1) shows that the violation encompassed by the "promote, manage" language ends short of the distribution of the bribery proceeds, that is, short of the end of what the government calls the "entire enterprise." The violation ends, in other words, with the completion of the state offense of bribery. Petitioner was not charged with "distribution," and he cannot be convicted as though he were. *Cole v. Arkansas*, 333 U.S. 196 (1948).

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[1] *United States v. Nardello*, 393 U.S. 286 (1969).

The Government contends, in support of its "entire enterprise" theory, that § 1952 may even be violated before a state law is violated, as by the use of an interstate facility with intent to promote bribery, whether or not the bribery is ever accomplished. This may be true, but it does not prove the converse, namely, that a defendant may have the necessary intent to promote a crime that has already been completed.

It seems obvious that any interest Virginia may have in post-offense activities is not pertinent, the Government's Memorandum, page 7, to the contrary. Under the Travel Act, the interest of Virginia that calls for federal assistance in enforcement must be the offense itself as proscribed by the Virginia statute. Anything more than this would make the Travel Act unconstitutionally vague.

2. All of the above shows the importance of this case. If the Government intends to prosecute for activities which fall within its theory of the "entire enterprise" but which occur after the state offense is complete or which are not necessary or essential parts of the state offense, then it is important for this Court to determine now whether such prosecutions will stand or fall.

Respectfully submitted,

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